IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1540 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAHIMBHAI ADAMBHAI TARAKVADIYA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR LR PATHAN for Applicant(s) : 1,
MR UR BHATT ADDTIONAL PUBLIC PROSECUTOR for Respondent(s) : 1,
MR NM KAPADIA for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 25/04/2007

ORAL JUDGMENT

1. Heard Mr. L.R. Pathan for the petitioenr, Mr.U.R.Bhatt, learned A.P.P. for the respondent No.1-State and Mr.N.M. Kapadia, learned advocate

for the respondent No.2.

1.1 Rule. Learned A.P.P. Mr. U.R.Bhatt, waives service on behalf of the respondent No.1-State while Mr. N.M. Kapadia waives service on behalf of the respondent no.2. With the consent of the learned Advocates for both the parties, the matter is taken up for final hearing and disposal today.

2. This Criminal Revision Application is directed against the impugned order dated 10-8-2006 passed by the learned Judicial Magistrate, First Class, Gadhda, in Gadhda Police Station II C.R. No.258 of 2005 as well as the order dated 17.6.2006 passed by the learned Sessions Court, Bhavnagar in Criminal Revision Application No.5 of 2006 allowed the said Revision Application by imposing condition of depositing the amount of Rs.1,50,000/- with the bank and pay the maintenance costs of animals to the Pajrapole for custody of the Muddammal sheeps and goats intercepted and seized by the Gadhda Police at

present kept at Gadhda Gaushala Panjarapole, Gadhda.

3. The petitioner is a small businessman engaged in the purchase and sale of cattle for earning his livelihood. It is the case of the applicant that on 4.10.2005, 23 sheeps and 50 goats were purchased by him and they were sent through tempo bearing Nos.GJ 6 W 7021. While on his way, the Gadhda Police intercepted and seized the said cattle on Gadhda Police Station C.R. No.258 of 2005 being filed on the allegation that the sheeps and goats were being taken for slaughtering and therefore, the petitioner has committed offences under Section 11 of the Prevention of Cruelty to Animals Act, 1960, Section 54, 56 and 50 of the Bombay Animal Prevention Act, 1954 and Sections 66 (1), 192 and 177 of the Motor Vehicles Act. Thereafter the custody of the said cattle in question were handed over to the Gadhda Gaushala Panjarapole, Gadha. The said tempo was seized by the police officers with cattle.

4. The present petitioner preferred an applciation in case of Gadhda Police Station C.R. No.258 of 2005 before the learned J.M.F.C., Gadhda for custody of the Muddamal sheeps and goats, which came to be rejected as allegedly the cattle in question were being transported in the aforesaid tempo in an unhygienic and cruel manner without any facilities of fodder and water and also on the ground that they were being taken for slaughtering. Being aggrieved by the said order of the learned Magistrate, the petitioner moved Criminal Revision Application No.5 of 2006 before the learned Sessions Court at Bhavnagar, which also met with the same fate. These two orders are the subject matter of challenge in the present Special Criminal Application.

4. Learned Counsel Mr. L.R. Pathan for the petitioner has submitted that merely because the cattle were tied very closely to each other and

the tempo was carrying more than the permitted number of cattle, it cannot be said that cruelty is committed so as to necessitate their seizure on the presumption that the cattle were meant to be slaughtered. The learned Counsel submitted that there was no allegation to the effect that the cattle were meant to be slaughtered. The learned advocate next submitted that even assuming that the offence of cruelty is committed, this was the first offence. The learned advocate also contended that some of the cattle were aged and suffering from debility. He has stated that the large number of cattle were died during proceedings. It is finally submitted that considering all these grounds, the applicant being the owner would be the best person to look after the cattle and as such the impugned judgment and order deserves to be quashed and set aside and the cattle be directed to be handed over to the applicant. In order to substantiate his say, the learned advocate has placed reliance on the decision dated 30th October, 1985/1st November, 1985 rendered in Special Criminal

Application No.804 of 1985 with Criminal Misc. Application no.1971 of 1985 (Coram: M.B.Shah,J. as His Lordship then was) wherein in an identical set of facts, the Court interfered with the order of the lower Court and directed the Investigating Officer to deliver possession of the alive animals to the petitioner forthwith and the learned Magistrate was also directed to see that the possession of animals was delivered to the petitioner immediately without fail on certain conditions. The learned Counsel has next placed reliance on the decision rendered in the case of Vadhwan Mahajan Panjarapole Vs. State of Gujarat & Anr., reported in 2001 (1) G.L.H. 662 as also the decicion of the Hon'ble Apex Court in Manager, Pancharapole, Deodar & Anr. Vs. Chakaram Moraji Nat & Ors, reported in 1999 (1) G.L.R. 587 (S.C.) to contend that in a case where the offence has been committed for the first time, the custody of the Muddamal must be handed over to the petitioner if there was no material on record to show that the offence is being

repeated. Furthermore, the learned Counsel has further drawn my attention to the decision in the case of MANAGER, PANJARAPOLE, DEODAR V. CHAKARAM MORAJI NAT. & ANR. reported in 1997(2)G.L.H.1321 wherein also it is observed that the interim custody of the seized animals must be handed over to the petitioner. I am fully convinced with the arguments canvassed by the learned Counsel for the petitioner. This Court (Coram M.D. Shah, J.) in Special Criminal Application No.376 of 2006 in the case of Shri Dhulaji Hakraji Salvi and other Vs. State of Gujarat, has observed the same state as above.

5. On the other hand, learned advocate Mr. N.M. Kapadia submitted that the order passed by the learned Judicial Magistrate, First Class is quite just and proper which does not warrant interference by this Court. He, therefore, prayed that the Criminal Revision Application be dismissed.

6. In view of what is discussed herein above, I am of the opinion that till the pending case in connection with II CR No.258 of 2005 is decided, the custody of the Muddamal animals must be handed over to the applicant and the present application deserves to be allowed. Hence, the application is allowed. The order of learned Sessions Judge, Bhavnagar passed in Criminal Revision Application No.5 of 2006 dated 17.6.2006 is hereby modified i.e. the condition imposed the learned Sessions Judge, Bhavnagar with regard to deposit Rs.1,50,0000/- is hereby set aside and to pay maintenance costs of animals to respondent Panjrapole. The impugned The order dated 10-8-2006 passed by the learned Judicial Magistrate, First Class, is hereby quashed and set aside. The interim custody of the sheeps and goats shall be handed over to the applicant upon his furnishing all the particulars regarding such cattle and also furnishing personal bond to the satisfaction of the lower Court, inter alia stating therein that the said cattle shall be produced before the learned Magistrate as and

when required. The applicant will be at liberty to take appropriate legal remedy against the concerned responsible persons for the loss of goats, if any, at an appropriate point of time. The trial Court is directed to give priority to the pending case in connection with CR No.II 258 of 2005 so as to conclude the proceedings as expeditiously as possible, preferably within a period of three months from today. The applicant is also directed to get the ears of the cattle punctured for the purpose of identification.

6. Rule is made absolute in the above terms. Direct service is permitted.

(M.D. SHAH, J.)

ynvyas